



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 14, 1993

Ms. Marsha W. Grove, Ph. D.
Interim Executive Director
Austin-Travis County MHMR
P.O. Box 3548
Austin, Texas 78764-3548

OR93-456

Dear Dr. Grove:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20389.

The Austin-Travis County Mental Health Mental Retardation Center (the "center") has received a request for information relating to a consumer rights investigation report prepared by Ms. Mary Murphy. Specifically, the requestor seeks "a full and complete copy of Ms. Murphy's report, with all attachments, and all other statements or documents used as the basis for my client's termination," including

1. The investigative report, prepared by a Center employee, concerning an alleged incident of patient abuse by my client, which report the undersigned was allowed to inspect, along with my client, in the Center's office . . .
2. The written statement (apparently appended as Attachment A to the above referenced investigative report) made by the patient, concerning the alleged incident of abuse.
3. The minutes of the Center's Client Abuse and Neglect Committee ("CANC") which reviewed the alleged abuse incident.
4. All records and reports concerning an earlier alleged incident of patient abuse by my client in 1990, which earlier incident was apparently a part of the basis for her termination.

The documents submitted to us for review include a document titled "Consumer Rights Violation/Abuse Investigation", handwritten witness statements provided by the patient complainant and the subject of the investigation, handwritten notes provided by the consumer rights advocate, a center incident report, and various internal memorandums.

You claim that these documents are excepted from required public disclosure by sections 3(a)(1), 3(a)(2), 3(a)(8), and 3(a)(11) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that section 3(a)(1) in conjunction with section 576.005 of the Health and Safety Code makes the requested information confidential. Section 576.005 provides:

Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

See also Open Records Decision No. 163 (1977) at 3 (applying predecessor statute to an investigation report of the Mexia State School).

The "Consumer Rights Violation/Abuse Investigation"; handwritten witness statements; handwritten notes provided by the consumer rights advocate; and the center incident report are "[r]ecords of a mental health facility that directly or indirectly identify a present . . . patient." We conclude, therefore, that these records must be withheld in their entirety under section 3(a)(1) of the Open Records Act in conjunction with section 576.005 of the Health and Safety Code.¹

However, the remaining information submitted to us for review, including the internal memorandums dated July 15, 1992, August 10, 1992, and November 24, 1992; the "Crisis Stabilization Unit Daily Schedule"; and the "Resolution of Complaints" poster do not "directly or indirectly identify" patients of a mental health facility. Accordingly, we conclude that these documents are not made confidential by section 576.005 of the Health and Safety Code. We also reject your claim that article 5561h, V.T.C.S., now section 611.002 of the Health and Safety Code, makes the requested information confidential. Section 611.002 provides in part that "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." The records submitted to us for review, however, relate to a complaint made by a patient to a consumer rights advocate and do not on their face contain "[c]ommunications between a

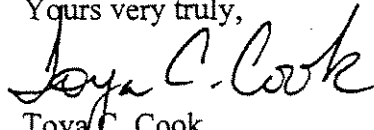
¹We understand that the center has previously given the requestor access to the "Consumer Rights Violation/Abuse Investigation," but has declined to provide the requestor with a copy of this document. When members of the public are permitted to examine information that could be withheld under section 3(a) of the Open Records Act, it ordinarily becomes available to any person. *See* Open Records Decision No. 400 (1983) at 2. However, the governmental body may not waive a statutory requirement to keep information confidential. *Id.*; *see also* V.T.C.S. art. 6252-17a, § 10(a) (confidential information must not be distributed to the public) Open Records Decision No. 412 (1984).

patient and a professional." Thus, section 611.002 is inapplicable here. Accordingly, these documents may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

Finally, you claim that sections 3(a)(2), 3(a)(8), and 3(a)(11) of the Open Records Act except the requested information from required public disclosure. You have not explained, however, how these exceptions apply to the information at issue here. We remind you that the custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not show how an exception applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. See Attorney General Opinion JM-672 (1987). We conclude, therefore, that sections 3(a)(2), 3(a)(8), and 3(a)(11) do not except the requested information from required public disclosure. Accordingly, the three internal memorandums submitted to us for review; the "Crisis Stabilization Unit Daily Schedule"; and the "Resolution of Complaints" poster must be released in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Open Government Section

TCC/GCK/jmn

Ref.: ID# 20389

cc: Mr. Don Cheatham
Two Cielo Center, Suite 300
1250 Capital of Texas Highway
Austin, Texas 78746